

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1953

ENROLLED

SENATE BILL NO. 134

(By Mr. Martin.....)

PASSED March 9..... 1953

In Effect ninety days from..... Passage



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Senate Bill No. 134

(By MR. MARTIN)

[Passed March 9, 1953; in effect ninety days from passage.]

AN ACT to amend chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article one-a, relating to trustees of security trusts and procedures and remedies incident thereto.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, to be designated article one-a, to read as follows:

Article 1-a. Trustees of Security Trusts.

Section 1. *Security Trust Defined.*—For the purposes
2 of this article, the term “security trust” shall include a

3 deed of trust, mortgage, bond or other instrument, en-
4 tered into after the effective date of this article under
5 which the title to real and personal property, or either
6 of them, wholly situate in and including no property
7 situate outside of the state of West Virginia, is con-
8 veyed, transferred, encumbered or pledged to secure the
9 payment of money or the performance of an obligation.

Sec. 2. Non-Residents of State Not to Be Named Trustee.

2 —No person not a resident of this state may be named
3 or act, in person or by agent or attorney, as the trustee
4 of a security trust, either individually or as one of several
5 trustees, the other or others of which are residents of this
6 state.

Sec. 3. Validity of Sales and Titles.—The non-residency
2 of a trustee shall not invalidate or cloud the title passing
3 under a security trust. Any conveyance made by a non-
4 resident trustee pursuant to foreclosure of a security trust
5 shall be as valid as though such trustee were a resident
6 of this state.

Sec. 4. Injunctive Powers of Circuit Courts.—The cir-
2 cuit court of the county in which the property is situate,

3 or the judge thereof in vacation, shall have jurisdiction in
4 equity, on the application of any party interested, to en-
5 join a sale, a conveyance pursuant to a sale, or proceed-
6 ings preliminary to a sale under any security trust by a
7 trustee not a resident of the state of West Virginia.

Sec. 5. *Recovery of Commission, Costs and Expenses.*—

2 In the event a non-resident trustee shall sell under a se-
3 curity trust, the grantor in the security trust may, within
4 one year from the day of such sale, in the circuit court of
5 the county where the sale was held or where the property
6 was situate at the time of sale, recover from such trustee
7 all commissions, costs and expenses of sale deducted by
8 such trustee from the proceeds of such sale or received by
9 the trustee on account of such sale, with interest at six
10 percent from the date of such sale.

Sec. 6. *Residence Address of Trustee Required.*—No

2 security trust shall hereafter be received by any county
3 clerk for recordation or filing which does not state the
4 residence address of the trustee or trustees named there-
5 in.

Sec. 7. *Auditor Attorney-in-Fact for Nonresident Trustees.*—The naming in a security trust of a person not a resident of this state as a trustee, or as one of several trustees thereof, shall be deemed equivalent to an appointment by such nonresident of the state auditor as attorney-in-fact of such nonresident trustee upon whom may be served all process and notices in any suit, action, motion or proceeding in any court of record in this state, and such service shall have the same effect as process or notice duly served in person upon such person in this state.

Sec. 8. *Service of Process or Notice; How Made.*—Service of such process or notice shall be made by mailing or delivering to the office of said auditor three copies of such process or notice, with a notation thereon of the residence address of the trustee upon whom service is being had, as stated in the security trust; if the address of the trustee be not stated in the security trust, the notation shall state the address of the beneficiary of such trust as given in the security trust; and service thereof shall be complete upon the receipt in said office of such notice or process bearing

11 such notation and accompanied by a fee of two dollars,
12 which shall be taxed as costs in the suit, action or pro-
13 ceeding. The auditor shall pay into the state treasury all
14 funds so coming into his hands, and shall keep one copy
15 of all such process and notices, with a record of the day
16 and hour of service thereof.

Sec. 9. *Action By Auditor.*—Forthwith upon such serv-
2 ice, said auditor shall send to such trustee the second copy
3 of such process or notice, by registered mail, return re-
4 ceipt requested, to the address stated in such notation.
5 The third copy of such process or notice, bearing the au-
6 ditor's acknowledgment of service on him, with his nota-
7 tion of the mailing of the second copy as above provided,
8 shall be transmitted by the auditor to the clerk of the
9 court issuing the process or to the person giving the
10 notice, as the case may be.

Sec. 10. *Other Manner of Serving Process or Notice.*—
2 The foregoing provisions for service of process and notices
3 are cumulative. Process and notices may also be served
4 upon any such nonresident trustee in any manner pro-
5 vided by law.

Sec. 11. *Appointment of Resident Trustee by Court; Rights and Powers of Trustee.*—The circuit court, or the judge thereof in vacation, of the county in which the property is situate, may, on motion of any party interested, appoint a trustee or trustees in the place of any nonresident trustee named in any security trust. Any trustee or trustees so appointed, if he or they accept, shall be vested with all the estates, rights and powers, and charged with all the duties and responsibilities, of the trustee or trustees named in the security trust.

Sec. 12. *Notice of Motion Procedure of Court's Appointment of Resident Trustee.*—Ten days' prior notice of the motion under the preceding section shall be given to the grantor of the security trust, his heirs, devisees or personal representatives, to the trustee or trustees named in the security trust, and to the person appearing by such security trust or by a recorded assignment thereof to be the party secured or his personal representatives. If any of the parties upon whom such notice is required to be served be under disability, the notice shall be served on his guardian or committee or, if he have none, the court

12 shall appoint a discreet and competent attorney at law
13 as guardian ad litem, upon whom notice may be served.

Sec. 13. *Provisions Severable and Remedial.*—The pro-
2 visions of this act are severable, and the unconstitution-
3 ality of one portion shall not affect other portions. The
4 provisions of this act are remedial, and shall be liberally
5 construed to the relief of the owners of property in this
6 state.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

A. M. Curley
Chairman Senate Committee

C. H. Ambler
Chairman House Committee

Originated in the Senate.

Takes effect *thirty days from* passage.

Howard Meyer
Clerk of the Senate

J. A. Hoff
Clerk of the House of Delegates

W. W. Battle
President of the Senate

W. E. Johnson
Speaker House of Delegates

The within *approved* this the *16th* day of *March*, 1953.

William C. Mallard
Governor.



FILED IN THE OFFICE OF THE SECRETARY OF STATE
of the State of Virginia **MAR 16 1953**
D. PITT O'BRIEN,
SECRETARY OF STATE